

REMARKS

Claims 172-212 constitute the pending claims in the present application. Applicants respectfully request reconsideration in view of the amendments made herein and the following remarks. Issues raised by the Examiner will be addressed below in the order they appear in the prior Office Action.

Withdrawal of Objections

Applicants note with appreciation the withdrawal of objections to the abstract, rejections under U.S.C. § 112 second paragraph, and rejections under obviousness-type double patenting over US 6,416,952 and 6,506,558.

Rejection of Claims 172-212 Under Obviousness-Type Double Patenting Over US 5,384,261 and 5,677,195

Claims 172-212 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of US 5,384,261 and claims 1-36 of US 5,677,195. The Examiner asserts that the claims in the cited patents are drawn to methods for forming peptide or oligonucleotide sequences on a substrate and that the products so formed would read on the claims of the instant application. The Examiner further acknowledges that the reference claims are not identical with those of the instant application.

Applicants respectfully disagree with the Examiner and assert that the invention of the instant application is patentably distinct from the inventions in the cited art. Nevertheless, for the purpose of expediting prosecution, Applicants are concurrently filing a Terminal Disclaimer over US 5,384,261 and US 5,677,195. Applicants point out that pursuant to MPEP § 804.02 “the filing of a terminal disclaimer to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection.” Furthermore, in *Quad Environmental Technologies Corp v. Union Sanitary District*, 946 F.2d 870, 20 USPQD2d 1392 (Fed. Cir. 1991):

The court indicated that the “filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection.”

As such, Applicants respectfully request withdrawal of the obviousness-type double patenting rejection.

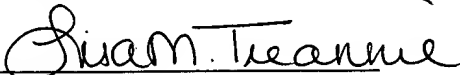
CONCLUSION

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Please credit any overpayment or charge any additional fees due to Deposit Account No. 18-1945, from which the undersigned is authorized to draw under Order No. AFMX-P01-009.

Dated: August 25, 2004

Respectfully submitted,

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